

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

RODOLFO ORTEGA, JR., PRO SE,	§	
TDCJ-CID No. 1522268,	§	
	§	
Plaintiff,	§	
	§	
v.	§	2:14-CV-0082
	§	
BRAD LIVINGSTON ET AL.,	§	
	§	
Defendants.	§	

ORDER OF DISMISSAL

Plaintiff RODOLFO ORTEGA, JR., while a prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division, filed suit pursuant to Title 42, United States Code, section 1983 complaining against seven defendants employed by the Texas Department of Criminal Justice, Institutional Division, and has been granted permission to proceed *in forma pauperis*.

On April 11, 2014, the Magistrate Judge issued a Report and Recommendation analyzing plaintiff's claims and recommending dismissal with prejudice as frivolous and without prejudice for failure to state a claim on which relief can be granted.

On April 22, 2014, plaintiff filed his Objections, arguing each of the defendants knows of his serious medical need to physically exercise and that he was suffering a deprivation of that need, because he has informed them. Plaintiff points to various copies of his communications to defendants telling them of his back pain, that he needs to exercise, that outside recreation is often cancelled, and asking to be single celled and allowed to exercise in the gym or the dayroom.

Nevertheless, plaintiff has not pointed to any medical pass issued by his medical care providers stating he has a serious medical need to be allowed to exercise in the dayroom or gym when outside recreation is cancelled, that he needs to be single celled, or that he is unable to do the necessary exercises in his present cell. In short, plaintiff has made plain to the Court and to prison officials his opinion of his condition and his needs. Nevertheless, his allegations clearly show medical personnel have refused to state that his needs, as he sees them, are serious medical needs. As has been previously explained to plaintiff, prison officials have no constitutional duty to believe an inmate's claims as to his medical condition as opposed to the findings of medical professionals. *See, e.g., Althouse v. Roe*, 542 F.Supp.2d 543 (E.D.Tex. 2008) (citing *Taylor v. McElvaney*, slip op.no. 1:01cv94 (N.D.Tex., Aug. 12, 2002)(unpublished) (available at 2002 WL 32138256)(no duty to believe inmate's allegations over officer's statement and medical record) (citations omitted)).

Plaintiff's request set forth in his Objections, that the Court order the Dalhart Unit to permanently place him in single-cell housing and give him a permanent pass to exercise in the dayroom as he feels the need, since his pain is not timed around outdoor recreation schedules, is not supported by the recommendation of his medical care givers.

The Court has made an independent examination of the records in this case and has examined the Magistrate Judge's Report and Recommendation, as well as the objections filed by the plaintiff.

The Court is of the opinion that plaintiff's objections should be OVERRULED and the Report and Recommendation of the United States Magistrate Judge should be ADOPTED by the United States District Court.

This Court, therefore, does OVERRULE plaintiff's objections, and does hereby ADOPT the Report and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that the Civil Rights Complaint by RODOLFO ORTEGA, JR., is DISMISSED WITH PREJUDICE AS FRIVOLOUS AND WITHOUT PREJUDICE FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

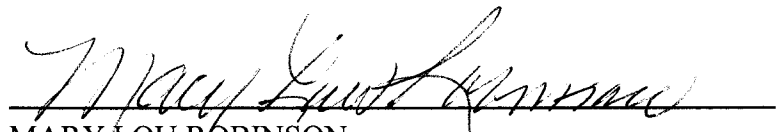
LET JUDGMENT BE ENTERED ACCORDINGLY.

All pending motions are DENIED.

The Clerk shall send a copy of this order to plaintiff and to any attorney of record. The Clerk shall also mail copies of this order to the Pro Se Clerk at the U.S. District Court for the Eastern District of Texas, Tyler Division.

It is SO ORDERED.

Signed this the 25th day of April, 2014.


MARY LOU ROBINSON
United States District Judge